



Leading the Marketing Community

October 24, 2005

The Honorable Mike Nofs  
Chairman, Energy and Technology Committee  
Michigan House of Representatives  
P.O. Box 30014  
Lansing, Michigan 48909

Dear Mr. Chairman:

I am writing on behalf of the Association of National Advertisers (ANA) to express our strong opposition to Senate Bill 708 and Senate Bill 785. Those bills would simply make changes to and raise the cost of a regulatory regime that ANA believes is fundamentally flawed – the Michigan Children's Protection Registry Act. While well meaning, that Act raises very serious First Amendment and interstate commerce concerns. In addition, we believe that the operation of the state registry would actually create even greater security risks for the children of Michigan. Senate Bills 708 and 785 do not improve or cure the serious problems with the existing Act. Therefore, we urge you to oppose both bills.

ANA is the industry's premier trade association dedicated exclusively to marketing and brand building. We represent more than 340 companies with over 8,000 brands that collectively spend more than \$100 billion annually in marketing communications and advertising. Our members market products and services to both consumers and businesses. Many of our members use e-mail as a valuable tool for communicating with consumers. More information about our association is available at [www.ana.net](http://www.ana.net)

Spam is a serious and complicated problem and ANA strongly supported passage of the federal CAN-SPAM Act. While that legislation is not a "silver bullet," it provides important new enforcement tools to the government and ISPs to crack down on illegitimate spammers. We share your concern about protecting children from receiving inappropriate messages. However, we do not believe that the state's child protection registry will accomplish that goal.

Criminal spammers have consistently demonstrated that they will not comply with the CAN SPAM law, just as they have refused to comply with the multiple state anti-spam laws. Only legitimate marketers, who want to play by the rules and respect the wishes of consumers, will be subject to the state's registry. Therefore, the registry would not be enforceable against the true bad actors and would not reduce the amount of inappropriate spam that reaches children in the state.

## **The Registry Raises Serious Security Concerns**

In fact, the state's registry could also create serious privacy and security risks for those persons who placed their children's "contact points" on the registry. Illegitimate spammers have demonstrated enormous technological skill in hacking into databases or flooding millions of mailboxes with multibillions of messages while avoiding detection or revealing their location. The state's registry could truly be the "Fort Knox" list of e-mail addresses for a criminal spammer, pornographer or pedophile. Neither the state government nor any private firm that manages the registry could ever develop an absolutely foolproof list at any cost.

The Federal Trade Commission (FTC) raised similar security concerns when it strongly recommended against the creation of a national Do Not Email Registry last year, particularly with respect to establishing such a list for children. In its report to Congress, the FTC concluded:

Nevertheless, our conclusions with respect to spam in general apply with equal force to spam that children receive: at present, such a Registry would at best be ineffective and at worst could cripple the email system or actually facilitate more spam – including more spam to children. **Furthermore, we conclude that any Do Not Email Registry that earmarked particular email addresses as belonging to or used by children would raise very grave concerns due to the security issues discussed above. The possibility that such a list could fall into the hands of the Internet's most dangerous users, including pedophiles, is truly chilling.** (Emphasis added)

The full text of the FTC's report to Congress is available at <http://www.ftc.gov/reports/dneregistry/report.pdf>

## **The Registry Raises Serious Constitutional Issues**

The state's child protection registry also raises serious First Amendment and interstate commerce concerns. Since the law only targets advertising for specific products and services, it is content-based and selectively imposed on only a small group of speakers. We do not believe the registry meets the First Amendment protections for commercial speech under *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

The state's registry regime also directly interferes with and seriously burdens interstate commerce. It imposes state-specific requirements on all senders of commercial messages, regardless of the business location of the sender.

For all of these reasons, we strongly urge you to oppose Senate Bill 708 and Senate Bill 785. We believe those bills would simply make changes to and increase the cost of a

fundamentally flawed regulatory regime. We share your commitment to protecting children from inappropriate messages, but the state registry is not the solution.

Thank you for your consideration of our views.

Sincerely,

Keith A. Scarborough  
Vice President, State Government Relations

C: Bob Liodice, ANA  
Dan Jaffe, ANA

